



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 4, 1997

Ms. Sharon Sneed Hicks  
City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604

OR97-2638

Dear Ms. Hicks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111508.

The Abilene Police Department (the "department") received a request for a specific offense report. You claim that the requested information is excepted from required public disclosure by sections 552.101, 552.103, and 552.108 of the Government Code.

Sections 552.301 and 552.302 require a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

The department received the request for information on September 24, 1997. You requested a decision from this office on October 13, 1997. Consequently, you failed to request a decision within the ten business days required by section 552.301(a) of the Government Code. Thus, we will examine whether the documents at issue are public and must be disclosed.<sup>1</sup>

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<sup>1</sup>Sections 552.103 and 552.108 are discretionary exceptions that a governmental body waives by its failure to timely request a decision from this office. *See, e.g.*, Open Records Decision Nos. 630(1994), 473 (1987).

You claim that some of the requested information should be withheld from disclosure under section 552.101 because it is protected by common-law privacy and by judicial decision. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85. In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Upon review, we do not find that the information submitted to this office is highly intimate or embarrassing.<sup>2</sup> In the absence of a demonstration that the requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the requested offense report in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/glg

Ref.: ID# 111508

Enclosures: Submitted documents

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<sup>2</sup>The scope of information considered private under the constitutional privacy doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." See Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

cc: Mr. Jeff Tippens  
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(w/o enclosures)